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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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9 PETE BRIAN GARCIA,
10 Petitioner,
11 v.
12 ANTHONY HEDGPETH,
13 Warden,
14 Respondent.

) Case No. CV 10-4104 DSF (JCG)

)
) **ORDER ADOPTING REPORT AND**
) **RECOMMENDATION OF UNITED**
) **STATES MAGISTRATE JUDGE AND**
) **DENYING CERTIFICATE OF**
) **APPEALABILITY**

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the
18 records herein, and the Report and Recommendation of the United States Magistrate
19 Judge. No objections to the Report and Recommendation have been filed. The
20 Court approves and adopts the Magistrate Judge's Report and Recommendation.
21 (The Court notes that footnote 1 incorrectly states that Pete Brian Garcia is
22 substituted as the proper Respondent.) Accordingly, IT IS ORDERED THAT:

- 23 1. Judgment shall be entered dismissing the action with prejudice.
24 2. The Clerk shall serve copies of this Order and the Judgment herein on
25 the parties.

26 Additionally, for the reasons stated in the Report and Recommendation, the
27 Court finds that Petitioner has not shown that jurists of reason would find it
28 debatable whether the Court was correct in its procedural ruling. As a result, a

1 Certificate of Appealability (“COA”) is denied. *See Slack v. McDaniel*, 529 U.S.
2 473, 484 (2000) (holding that when a court dismisses a petition on procedural
3 grounds, a COA should issue only when a “prisoner shows, at least, that jurists of
4 reason would find it debatable whether the petition states a valid claim of the denial
5 of a constitutional right *and* that jurists of reason would find it debatable whether the
6 district court was correct in its procedural ruling[.]”) (emphasis added).

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9 DATED: 5/3/11



HON. DALE S. FISCHER
UNITED STATES DISTRICT JUDGE